



## **Agricultural Marketing Service**

### **7 CFR Part 945**

**[Doc. No. AMS-SC-20-0074; SC20-945-1 FR]**

## **Modification of Handling Regulations for Irish Potatoes Grown in Designated Idaho and Eastern Oregon Counties**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises size requirements for Irish potatoes grown in certain designated counties of Idaho, and Malheur County, Oregon. The Idaho-Eastern Oregon Potato Committee (Committee) recommended this action to improve the handling and marketing of Idaho-Eastern Oregon potatoes and increase returns to producers.

**DATE:** Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Gregory A. Breasher, Marketing Specialist, or Gary D. Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326-2054, Fax: (503) 326-7440, or E-mail:

Gregory.Breasher@usda.gov or GaryD.Olson@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, or E-mail: Richard.Lower@usda.gov.

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This final rule is issued under Marketing Agreement and Marketing Order No. 945, both as

amended (7 CFR part 945), regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon. Part 945 (referred to as the "Order") is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The Committee locally administers the Order and is comprised of potato producers and handlers operating within the production area.

The Department of Agriculture (USDA) is issuing this final rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This final rule has been reviewed under Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. The Agricultural Marketing Service (AMS) has determined that this final rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject

to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Under terms of the Order, fresh market shipments of Idaho-Eastern Oregon potatoes are required to be inspected and are subject to minimum grade, size, quality, maturity, pack, and container requirements. This rule revises provisions of previously established size requirements for potatoes handled under the Order.

At its meeting on August 6, 2020, the Committee unanimously recommended revising the Order's size requirements to allow shipment of Size B, U.S. No. 2 or better grade, non-Russet type potatoes. Sections 945.51 and 945.52 of the Order provide authority for the establishment and modification of grade, size, quality, and maturity regulations applicable to the handling of potatoes.

Section 945.341 of the Order establishes minimum grade, size, quality, maturity, pack, and container requirements for potatoes handled subject to the Order. The Order's handling regulations currently require that U.S. No. 2 or better grade, non-Russet type potatoes meet a minimum size of 1 7/8 inches diameter, unless otherwise specified on the container in connection with the grade. Additionally, all varieties of potatoes that meet requirements of the U.S. No. 1 grade or better may be Size B (1 1/2 to 2 1/4 inches) or Creamer (3/4 to 1 5/8 inches) size.

This rule relaxes size requirements to allow handlers to ship Size B (1 1/2 to 2 1/4 inches), U.S. No. 2 or better grade, non-Russet variety potatoes. Revised size

requirements are not applicable to Russet type potatoes.

Committee members reported that the Idaho-Eastern Oregon potato industry has been producing and shipping an increasing number of non-Russet potato varieties – yellow and red skinned, round types, in particular. Institutional customers have indicated that they would like to purchase more of these potatoes, especially in the smaller size profiles like Size B. Currently, Size B potatoes of all varieties are required to meet requirements of the U.S. No. 1 grade or better. The Committee believes that this requirement is too restrictive for non-Russet type potatoes and that market demand exists for Size B, non-Russet type potatoes in the U.S. No. 2 or better grade.

The Committee believes that potato size is a significant consideration for potato buyers. Providing potato buyers with the size and grade of potato desired by their customers is important to promoting potato sales. The Committee believes that size requirements intended to facilitate orderly marketing should not unintentionally inhibit a market segment, even if that segment is a minor one. Modifying size requirements to meet needs of potato buyers will facilitate the growth of the emerging market for small profile, non-Russet potato varieties. This change is expected to improve the marketing of Idaho-Eastern Oregon potatoes and enhance overall returns to handlers and producers.

### **Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this final rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Import regulations issued under the

Act are based on those established under Federal marketing orders.

There are approximately 32 handlers of Idaho-Eastern Oregon potatoes who are subject to regulation under the Order and about 450 potato producers in the regulated area. Small agricultural service firms, which include potato handlers, are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$30,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$1,000,000 (13 CFR 121.201).

During the 2019-2020 fiscal period, the most recent full year of statistics available, 34,306,700 hundredweight of Idaho-Eastern Oregon potatoes were inspected as required by the Order and sold into the fresh market. Based on information provided by the National Agricultural Statistics Service (NASS), the average producer price for the 2019 Idaho potato crop (the most recent full marketing year recorded) was \$8.41 per hundredweight. Multiplying \$8.41 by the shipment quantity of 34,306,700 hundredweight yields an annual crop revenue estimate of \$288,519,347. The average annual fresh potato revenue for each of the 450 producers is therefore calculated to be \$641,154 (\$288,519,347 divided by 450), which is less than the SBA threshold of \$1,000,000. Consequently, on average and assuming a normal distribution, most Idaho-Eastern Oregon potato producers may be classified as small entities.

In addition, based on information reported by USDA's Market News Service (Market News), the average Free-On-Board shipping point price for the 2019-2020 Idaho potato crop was \$11.90 per hundredweight. Multiplying \$11.90 by the shipment quantity of 34,306,700 hundredweight yields an annual crop revenue estimate of \$408,249,730. The average annual fresh potato revenue for each of the 32 handlers is therefore calculated to be \$12,757,804 (\$408,249,730 divided by 32), which is below the SBA threshold of \$30,000,000 for agricultural service firms. Therefore, assuming a normal

distribution, it has been concluded that most Idaho-Eastern Oregon potato handlers may be classified as small entities.

This final rule revises size requirements for non-Russet type potatoes handled under the Order. Specifically, this action relaxes size requirements to allow shipment of non-Russet type, U.S. No. 2 or better grade, Size B potatoes. All other provisions of handling regulations will remain the same.

This action was recommended by the Committee to ensure that consumers are able to purchase the size and grade of potatoes that they prefer and are familiar with. This change is expected to improve the marketability of Idaho-Eastern Oregon potatoes and increase returns to handlers and producers. Authority for this rule is provided in §§ 945.51 and 945.52 of the Order.

At the August 6, 2020, meeting, the Committee discussed the impact of this change on handlers and producers. The change to size requirements is a relaxation in regulation. The regulatory change is expected to have a neutral to positive economic impact on industry participants.

The Committee relied on opinions of producers and handlers familiar with the industry to draw its conclusions regarding the recommended change in handling regulations. The Committee received anecdotal evidence from industry members at the August 6, 2020, meeting that customers were already familiar with the Size B potato profile and the U.S. No. 2 grade standards. Allowing industry members to pack and ship such potatoes will help them to move what has traditionally been a difficult size profile to market.

The Committee believes that this change will increase the quantity of potatoes in the Size B profile that are available to the fresh market, potentially increasing producer and handler revenues. Benefits derived from this rule change are not expected to be disproportionately more or less for small handlers or producers than for larger entities.

The Committee discussed alternatives to this change. One consideration was making no change at all to the current requirements. Another alternative was to further differentiate between various varieties and types of potatoes in handling regulations. The Committee also discussed further relaxing handling regulations to allow shipment of U.S. No. 2 or better grade, Creamer size, non-Russet type potatoes in addition to its recommendation for Size B potatoes. After consideration of all alternatives, the Committee believed that changes contained herein provide the greatest benefit to producers and handlers while maintaining the integrity of the Order.

The Committee's meeting was widely publicized throughout the potato industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the August 6, 2020, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons were invited to submit comments on the proposed rule, including regulatory and information-collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0178, Vegetable and Specialty Crops. No changes are necessary in these requirements as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule does not impose any additional reporting or recordkeeping requirements on either small or large potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services.

A proposed rule concerning this action was published in the **Federal Register** on April 23, 2021 (86 FR 21667). Copies of the proposal were provided by the Committee to members and handlers. Finally, the proposed rule was made available through the internet by USDA and the Office of the **Federal Register**. A 60-day comment period ending June 22, 2021, was provided to allow interested persons to respond to the proposal. No comments were received. Accordingly, no changes have been made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it was found that this rule effectuates the declared policy of the Act.

#### **List of Subjects in 7 CFR Part 945**

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For reasons set forth above, 7 CFR part 945 is amended as follows:

#### **PART 945 - IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON**

1. The authority citation for part 945 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.



2. In § 945.341, revise paragraphs (a)(2)(i) through (iii) to read as follows:

**§ 945.341 Handling regulation.**

(a) \* \* \*

(2) \* \* \*

(i) *All varieties, except Russet types.* (A) 1 7/8 inches minimum diameter, unless otherwise specified on the container in connection with the grade.

(B) Size B (1 1/2 to 2 1/4 inches diameter).

(ii) *Russet types.* (A) 2 inches minimum diameter, or 4 ounces minimum weight:

*Provided*, that at least 40 percent of the potatoes in each lot shall be 5 ounces or heavier.

(B) Size B (1 1/2 to 2 1/4 inches diameter) if the potatoes otherwise meet requirements of U.S. No. 1 grade or better.

(iii) *All varieties, U.S. No. 1 grade or better.* Creamer (3/4 to 1 5/8 inches diameter).

\* \* \* \* \*

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Agricultural Marketing Service

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